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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/729,296	12/05/2003	Tadlington A. Stout	AQU400US	2162
35083	7590	10/18/2004	EXAMINER	
CHARLES D. GAVRILOVICH, JR., A PROFESSIONAL CORPORATION 985 PASEO LA CRESTA, SUITE A CHULA VISTA, CA 91910-6729			NGUYEN, TAM M	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,296

Applicant(s)

STOUT ET AL.

Examiner

Tam Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-4, 7, 8, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by MacKechnie (4,623,142).

As to claims 1-4, 7, 8, 10 and 11, MacKechnie discloses an aquatic exercise device comprising a substantially domed shaped bell (2) that includes an apex, an opening and a bell axis that extends through said apex and opening, fins symmetrically arranged and a handle, having a handle axis, connected to the domed shaped bell wherein the handle is non-perpendicular to said axis such that the handle is parallel or coincides with said axis as substantially claimed (see Figs. 1 & 4).

2. Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Solloway (4,468,023).

As to claims 12 and 13, solloway discloses an aquatic exercise device as substantially claimed (see Fig.5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacKechnie (4,623,142) in view of Solloway (4,468,023).

As to claims 5 and 9, MacKechnie discloses an exercise device as substantially claimed (see discussion of claims 1 and 8). MacKechnie does not disclose that the bell axis and the handle axis has an angle there between that is between zero and ninety degrees. Solloway discloses a similar exercise device wherein an angle between the handle axis and the bell axis is between zero and ninety degrees. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make adjust the handle of MacKechnie's device such that an angle between the axis of the handle and the axis of the bell would be between zero and ninety degrees since the practice of adjusting such handles is well known in the art so that the user can practice other exercise motions such as golf swings under water.

As to claim 6, MacKechnie discloses an exercise device as substantially claimed (see discussion of claim 1). MacKechnie does not disclose the addition of apertures to the device that already includes fins. Solloway discloses an aquatic exercise device that teaches the use of both fins and apertures (see Figs. 22 & 23). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add apertures to MacKechnie's exercise device since the practice of combining fins and apertures on aquatic exercise devices is well known in the art and the apertures would provide a reduced resistance to the user.

4. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Solloway (4,468,023) in view of Shelton et al. (D344,113).

As to claim 14, Solloway discloses an exercise device as substantially claimed. Solloway does not disclose the addition of fins to the device that already includes apertures. Shelton et al. disclose an aquatic exercise device that teaches the use of both fins and apertures (see Figs. 1-6). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add fins to Solloway's exercise device since the practice of combining fins and apertures on aquatic exercise devices is well known in the art and the fins would provide further resistance to the user for increased exercise.

As to claims 15-17, Solloway and Shelton disclose a modified exercise device as described above. Solloway inherently discloses exercise motions but he does not disclose a method of exercise as substantially claimed. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use the device to perform an array of exercise motions including the motion as claimed wherein an aquatic device is grasped by both hands and the user's torso is rotated through the water since such a motion is a common motion during exercise.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 703-305-0784. The examiner can normally be reached on M-F, 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 14, 2004


JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

10/14/04